

**FILED & ENTERED**

**MAY 10 2017**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY Ogier DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

SHULAMIT SHOSHY HIMMELMAN,

Debtor.

DANIEL RUBINSTEIN,

Plaintiff,

vs.

SHULAMIT SHOSHY HIMMELMAN,

Defendant.

**Case No.: 1:15-bk-11310-MB**

**Chapter 7**

**Adv. Proc. No.: 1:15-ap-01121-MB**

**MEMORANDUM OF DECISION  
GRANTING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGEMENT**

## I. INTRODUCTION

Dr. Daniel Rubinstein (the “Plaintiff”), a creditor of Shulamit Shoshy Himmelman (the “Debtor”), seeks a determination that two state court judgments are nondischargeable in Debtor’s bankruptcy pursuant to sections 523(a)(2), (4) & (6) of the Bankruptcy Code.<sup>1</sup> Plaintiff’s motion for summary judgement, Adv. Dkt. 32, argues that issue preclusion, as applied to the factual findings made by the state court, entitles Plaintiff to judgment as a matter of law. Having considered the moving and opposing papers, requests for judicial notice filed in connection therewith, the parties supplemental briefing, the oral arguments made by the parties at hearings on November 10, 2016, and January 26, 2017, and the record in this adversary proceeding, the Court grants summary judgment in Plaintiff’s favor.

## II. FACTS AND PROCEDURAL HISTORY

In April 2011, Plaintiff brought suit against the Debtor and her husband Doron Himmelman (“Doron”) in California state court. The complaint alleged a breach of contract claim for nonpayment of a \$60,000.00 loan, and a conversion claim for Debtor’s wrongful possession of Plaintiff’s heirloom furniture and furnishings. In June 2012, Plaintiff filed a separate suit against the Debtor and Doron for several claims arising from a 2001 partnership transaction concerning an eight unit apartment building known as 74010-7416 Kester Avenue, Van Nuys, California (the “Property”). The two actions were later consolidated.<sup>2</sup> The Debtor was represented by counsel, answered the state court complaint, and participated in pre-trial and trial proceedings. Judgment was entered in Plaintiff’s favor on January 22, 2015 (the “Phase 1 Judgment”). *See* Adv. Dkt 34, Exh. 1 at 4-23.

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<sup>1</sup> Unless otherwise noted, all code sections referred to herein are to the United States Bankruptcy Code, Title 11 U.S.C. et seq.

<sup>2</sup> The judgments were entered by the Los Angeles Superior Court in Case Number BC 459 384 (consolidated with Case No. BC 486 668). Copies of these judgments have been provided to the Court. *See Request for Judicial Notice*, Adv. Dkt. 34.

1 The state court concluded that, by clear and convincing evidence, the Debtor and Doron  
2 were jointly and severally liable for breach of contract with respect to the \$60,000.00 loan, and  
3 ordered the Debtor and Doron to pay back the principal, prejudgment interest of \$38,219.18, and  
4 additional interest at the legal rate thereafter (the “Contract Damages”). Phase 1 Judgment, 10:11-  
5 20. Regarding the conversion claim, the state court concluded that both Debtor and Doron  
6 “intentionally and willfully exercised dominion and control over and converted to their own  
7 personal use” the Plaintiff’s heirloom furniture and furnishings, and were ordered to allow Plaintiff  
8 access to the Debtor’s property to inspect and recover the converted possessions. Phase 1  
9 Judgment, 10:23-25. With respect to the conversion, the state court found by clear and convincing  
10 evidence that “[the Debtor and Doron] acted oppressively and in conscious derogation of  
11 [Plaintiff’s] rights.... [The] conduct... was despicable, malicious and warranted by an intent to  
12 cause harm and injury to [Plaintiff].” Phase 1 Judgment, 11:27- 12:3. Accordingly, the state court  
13 found that Plaintiff was entitled to punitive damages based on the conversion claim. Phase 1  
14 Judgment, 12:5-6.

15 The state court then turned to the causes of action related to the partnership transaction and  
16 the Property. The state court found by clear and convincing evidence that the Debtor<sup>3</sup> fraudulently  
17 induced Plaintiff to invest \$200,000.00 into a real estate venture with the Debtor. The Debtor made  
18 an intentional and knowingly false misrepresentation of material fact to the Plaintiff that in  
19 exchange for the \$200,000.00 investment Plaintiff would become a 50% general partner with  
20 Debtor “in the [P]roperty” and that Plaintiff would receive a grant deed from the Debtor conveying  
21 a 50 percent fee interest in the Property. Phase 1 Judgment, 12:9-14. The state court found that  
22 this same conduct constituted a false promise made without any intention of performance, and that  
23 the Debtor deliberately concealed his true intention to never deliver a grant deed and planned to  
24 deny the existence of a partnership should Plaintiff ever sue to enforce his rights. Phase 1

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25  
26 <sup>3</sup> The Court found by clear and convincing evidence that the Debtor and Doron, as her attorney in fact, jointly  
27 conspired and aided and abetted each other with respect to all claims relating to the partnership transaction and the  
28 Property. Phase 1 Judgment, 12:9-13.

1 Judgment, 12:19-28. The state court found that the transaction created a general partnership and  
2 that Debtor owed a fiduciary duty to the Plaintiff as an “equal co-partner.” Phase 1 Judgment,  
3 12:13, & 14:7-8. A handwritten copy of a partnership agreement signed by the Debtor and Plaintiff  
4 was introduced at trial. *See* Adv. Dkt. 53 at 9. The state court also found that from April 2002  
5 until trial, the Debtor retained all rents and profits from the Property and continually  
6 misrepresented the tenant occupancy, tenant turnover, operating expenses, and net income of the  
7 Property in order to fraudulently conceal and misappropriate partnership funds. Phase 1 Judgment,  
8 13:1-9. The state court found that this conduct constituted serial and deliberate frauds as well as  
9 breaches of fiduciary duties owed by the Debtor to Plaintiff. Phase 1 Judgment, 12:12-13.

10 The state court quieted title to the Property, adjudging Plaintiff the holder of an undivided  
11 50 percent fee simple interest beginning in November 2001. Phase 1 Judgment, 13:15-17. The  
12 state court found that Plaintiff’s share of the rents, issues and profits from his partnership interest  
13 was \$1,121,249.84 (the “Disgorgement Liability”), which includes \$557,931.75 in principal,  
14 accrued compound prejudgment interest of \$564,318.09, as of January 21, 2015, and continuing  
15 compound interest thereafter of 10 percent per annum. Phase 1 Judgment, 14:7-11. The state court  
16 found that Plaintiff was entitled to Punitive Damages based on the fraudulent conduct and breaches  
17 of fiduciary giving rise to the Disgorgement Liability. Phase 1 Judgment, 18:16-17 & 19:13-23.

18 The state court ordered a second phase of trial in order to determine the appropriate amount  
19 of the punitive damages to be awarded against the Debtor and Doron. A second judgment was  
20 entered in Plaintiff’s favor on April 25, 2015 (the “Phase 2 Judgment”). *See* Adv. Dkt 34, Exh. 2 at  
21 25-46. The state court found “by reason of the multiple frauds, breaches of fiduciary duty, and  
22 other and intentionally tortious conduct” that plaintiff was entitled punitive damages. Phase 2  
23 Judgment 12:7-8. The state court adopted, as its own finding, the closing argument made by  
24 Plaintiff’s attorney at the first phase of trial to explain why the imposition of punitive damages was  
25 appropriate in the case:

26 [T]he way [Plaintiff] was treated for the last 15 years manifest[s] the paradigm of  
27 oppression, fraud, and malice.... they disregarded his rights. They lied to him; they  
28 concealed the truth from him.... It wasn’t an accident. It wasn’t “Oh, my gosh, I don’t know

1 what happened.” It was day in, day out, year in, year out, forcing Dr. Rubinstein to do  
2 herculean efforts to get what he’s entitled to...it’s not only fraud, it’s not only oppression,  
3 but it’s also malice, and on each of those grounds we’re entitled to an award of punitive  
4 damages...

5 Phase 1 Judgment, 19:3-25; Phase 2 Judgment, 10:25-11:16. The state court awarded punitive  
6 damages in the amount of \$182,833.98, on a joint and several basis against the Debtor and Doron  
7 (the “Punitive Damages”). Phase 2 Judgment, 15:2-6.

8 The complaint in this Adversary Proceeding alleges the Disgorgement Liability and the  
9 Punitive Damages are nondischargeable because they are debts incurred for:

- 10 1. Money the Debtor obtained by false representation and/or actual fraud, excepted from  
11 discharge pursuant to Bankruptcy Code section 523(a)(2)(A);
- 12 2. Damages caused as a result of frauds and/or defalcations while acting in a fiduciary  
13 capacity, excepted from discharge pursuant to Bankruptcy Code section 523(a)(4);
- 14 3. Damages caused by the Debtor’s willful and malicious injury to the Plaintiff, excepted  
15 from discharge pursuant to Bankruptcy Code section 523(a)(6).

16 The Plaintiff does not allege that the Contract Damages are nondischargeable. The Plaintiff  
17 calculates the total nondischargeable debt owed by the Debtor as of August 4, 2016, as  
18 \$1,480,248.86, with interest continuing at the legal rate of 10 percent per annum until the sum is  
19 paid in full, corresponding to a per diem amount of \$357.28. The Plaintiff also seeks to recover the  
20 attorney’s fees and costs he has incurred in this nondischargeability action.

### 21 **III. JURISDICTION**

22 The Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b).  
23 Venue is proper under 28 U.S.C. § 1409(a). This proceeding is a core matter pursuant to 28 U.S.C.  
24 § 157(b)(2)(I), and the Court has constitutional authority to enter final judgment on all of the  
25 claims asserted herein. *Stern v. Marshall*, 564 U.S. 462 (2011).

#### IV. LEGAL STANDARDS

##### A. Summary Judgment

A party is entitled to summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *See* Federal Rule of Civil Procedure (“FRCP”) 56(c), made applicable by Federal Rule of Bankruptcy Procedure (“FRBP”) 7056. In determining whether a genuine issue of material fact exists, evidence must be viewed in the light most favorable to the opposing party; the evidence of the non-moving party is to be believed, and all justifiable inferences are to be drawn in his or her favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Avalos v. Baca*, 596 F.3d 583, 587 (9th Cir. 2010). “[T]he substantive law will identify which facts are material.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* A factual dispute is genuine where the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. *Id.*

Plaintiff has the burden of persuasion at trial to prove its claims under Bankruptcy Code section 523 by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 291 (1991); *Nissan Fire & Marine Ins., Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000) (“A moving party without the ultimate burden of persuasion at trial—usually but not always the defendant—has both the initial burden of production and the ultimate burden of persuasion on a motion for summary judgment.”).

##### B. Issue Preclusion Generally

Issue preclusion applies to proceedings that seek exceptions from discharge. *See Grogan v. Garner*, 498 U.S. 279, 284 fn. 11 (1991). The doctrine of issue preclusion, also known as collateral estoppel, prevents the relitigation of issues “that were actually litigated and necessarily decided” in a prior proceeding. *Ribi v. Five Platters, Inc.*, 838 F.2d 318, 321 (9th Cir. 1988) (citing *Segal v. American Tel. & Tel. Co.*, 606 F.2d 842, 845 (9th Cir. 1979)). Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy

proceeding is determined by the preclusion law of the state in which the judgment was issued. *See In re Nourbakhsh*, 67 F.3d 798, 800 (9th Cir. 1995) (*citing Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985)). Accordingly, California issue preclusion law applies to the Phase 1 Judgment and Phase 2 Judgment.

### **C. Issue Preclusion Under California Law**

Under California law, “collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” *See Lucido v. Superior Court*, 51 Cal.3d 335 (1990). California courts will apply collateral estoppel if the following requirements are met: (1) the issue to be precluded from relitigation must be identical to that decided in a former proceeding; (2) this issue must have been actually litigated in the former proceeding; (3) it must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as the party to the former proceeding. *See Lucido* at 341. “The party asserting collateral estoppel bears the burden of establishing these requirements.” *Id.*

## **V. DISCUSSION**

Plaintiff argues the state court’s factual findings in the Phase 1 Judgment and Phase 2 Judgment are preclusive and leave no material factual dispute as to the application of Bankruptcy Code sections 523(a)(2), (a)(4), & (a)(6) as a matter of law. “The party seeking to apply issue preclusion has the burden of proving that each element is satisfied. To sustain this burden, a party must introduce a record sufficient to reveal the controlling facts and the exact issues litigated in the prior action. Any reasonable doubt as to what was decided in the prior action will weigh against applying issue preclusion.” *In re Derebery*, 324 B.R. 349, 353 (Bankr. C.D. Cal. 2005) (*citing In re Kelly*, 182 B.R. 255, 258 (9th Cir. B.A.P. 1995)). The Debtor argues the state court findings are ambiguous and should not be given preclusive effect.

The Court notes that “collateral estoppel is not mechanically applied, and in each case the court must determine whether its application will advance the public policies which underlie the doctrine. . . . Those policies are: (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial

1 system; and (3) to provide repose by preventing a person from being harassed by vexatious  
2 litigation." *Alpha Mech., Heating & Air Conditioning, Inc. v. Travelers Cas. & Sur. Co. of Am.*,  
3 133 Cal. App. 4th 1319, 1333 (2005) (quoting *Wright v. Ripley*, 65 Cal. App. 4th 1189, 1193  
4 (1998)). Here the parties have already been through a trial on the merits and have obtained two  
5 detailed orders from the state court.<sup>4</sup> This litigation is not vexatious. The first two policies are  
6 clearly implicated and weigh in favor of applying issue preclusion in this case. Accordingly, if the  
7 required elements for issue preclusion application are met, the underlying policy of fairness and  
8 judicial economy will be served by applying the doctrine in this case.

9 **A. The Disgorgement Liability**

10 The Ninth Circuit requires exceptions to discharge under Bankruptcy Code section 523(a)  
11 be construed narrowly. *See, e.g., In re Jackson*, 184 F.3d 1046, 1051 (9th Cir. 1999); *In re Bowen*,  
12 102 B.R. 752, 756 (9th Cir. B.A.P. 2001).

13 **1. Nondischargeability under Section 523(a)(2)(A)**

14 The Disgorgement Liability is nondischargeable under Bankruptcy Code section  
15 523(a)(2)(A).

16 **a. The exact issues sought to be precluded were decided in a former  
17 proceeding**

18 To establish nondischargeability under Bankruptcy Code section 523(a)(2)(A) a creditor  
19 show that: (1) the debtor made a false statement or engaged in deceptive conduct; (2) the debtor  
20 knew the representation to be false; (3) the debtor made the representation with the intent to  
21 deceive the creditor; (4) the creditor justifiably relied on the representation; and (5) the creditor  
22 sustained damage resulting from its reliance on the debtor's representation. *In re Slyman*, 234 F.3d  
23 1081, 1085 (9th Cir. 2000). A finding of fraud under California law requires: (1) a

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24 <sup>4</sup> The Debtor argues that the state court judgments are ambiguous and objects that the state court complaint never  
25 alleged "multiple frauds." The Debtor, however, failed to introduce the state court complaint into the record in this  
26 proceeding and the Court is unpersuaded by this argument. The Phase 1 Judgement and Phase 2 Judgement are 20 and  
27 15 pages long, respectively, and very detailed. The Court does not find that they are ambiguous as to the issues  
28 litigated and necessarily decided.

1 misrepresentation; (2) knowledge of falsity; (3) intent to defraud, i.e. to induce reliance; (4)  
2 justifiable reliance; and (5) resulting damage. *See Engalla v. Permanente Med. Grp., Inc.*, 15  
3 Cal.4th 951, 973-74 (1997). The elements for fraud under section 523(a)(2)(A) and California law  
4 are same. Accordingly, as discussed below, the detailed factual findings in the Phase 1 Judgment  
5 satisfy the elements of the Plaintiff's claim that the Disgorgement Liability is nondischargeable  
6 under section 523(a)(2)(A).

7 **i. False statement or deceptive conduct**

8 The state court found that the Debtor continually misrepresented the tenant occupancy,  
9 tenant turnover, operating expenses, and net income of the Property in order to fraudulently conceal  
10 and misappropriate partnership funds. Phase 1 Judgment, 13:1-9. The state court also found a  
11 course of deceptive conduct that included fraudulent inducement of the initial partnership, false  
12 promises, and concealment of a true intention to later deny that a partnership was ever created in  
13 the event the Plaintiff ever sued to enforce his rights. Phase 1 Judgment, 12:9-28. Thus, with  
14 respect to the Disgorgement Liability, the state court decided there was a false statement or  
15 deceptive conduct.

16 **ii. Knowledge of falsity**

17 “[E]ither actual knowledge of the falsity of a statement, or reckless disregard for its truth,  
18 satisfies the scienter requirement for nondischargeability of a debt,” *In re Grabau*, 151 B.R. 227  
19 (N.D. Cal. 1993); *see also, In re Kong*, 239 B.R. 815, 826 (9th Cir. B.A.P. 1999). The state court  
20 found that the Debtor's misrepresentations were “intentional and knowingly false,” and that the  
21 Debtor was “deliberate” in concealing her true intentions not to perform. Phase 1 Judgment, 12:15,  
22 12:24-25. Further, the state court found that the Debtor secretly and fraudulently retained  
23 substantial net operating income and profit each year, while making material misstatements to  
24 Plaintiff as to the financial condition of the Property and the income it was producing. Phase 1  
25 Judgment, 13:1-8. Thus with respect to the Disgorgement Liability, the state court decided the  
26 Debtor had knowledge of the falsity of her statements and deceptive conduct.

**iii. Intent to deceive/induce reliance**

When a false statement is a promise to perform in the future, a subsequent failure to perform alone is not enough to prove the promise was fraudulent; rather, it must be shown that the debtor did not intend to perform at the time the promise was made. *See In re Lee*, 186 B.R. 695, 699 (9th Cir. B.A.P. 1995). The state court found that the Debtor was concealing a secret intention from the outset of the partnership neither to deliver a grant deed to the Plaintiff nor to divide any profits or income generated by the Property. Phase 1 Judgment, 12:24-27. The Debtor subsequently carried out her secret intention by continually misrepresenting the tenant occupancy, tenant turnover, operating expenses, and net income of the Property in order to fraudulently conceal and misappropriate partnership funds. Phase 1 Judgment, 13:1-9. Thus with respect to the Disgorgement Liability, the state court decided the Debtor intended to deceive Plaintiff and induce reliance.

**iv. Justifiable reliance**

Bankruptcy Code section 523(a)(2)(A) uses a subjective “justifiable reliance” standard. *See In re Eashai*, 87 F.3d 1082, 1090 (9th Cir. 1996). “Justification is a matter of the qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases.” *Field v. Mans*, 516 U.S. 59, 70 (1995) (quoting the RESTATEMENT (SECOND) OF TORTS § 545A cmt .b (1976)). “[A] person is justified in relying on a representation of fact although he might have ascertained the falsity of the representation had he made an investigation.” *Field v. Mans*, 516 U.S. at 70 (quoting RESTATEMENT (SECOND) OF TORTS § 540). However, a person cannot justifiably rely on representations that are obviously false or otherwise known to be false. *In re Kirsh*, 973 F.2d 1454, 1459 (9th Cir. 1992) (a “person cannot purport to rely on preposterous representations or close his eyes to avoid discovery of the truth”). Justifiable reliance also is an element of fraud under California law and was found by the state court to exist. *See, e.g., Hinesley v. Oakshade Town Center*, 135 Cal. App. 4th 289 (2005); *Goehring v. Chapman University*, 121 Cal. App. 4th 353 (2004). Based on the testimony adduced at trial, the state court found that Plaintiff acted “in reliance on [Debtor’s] aforementioned representations, promises and assurances, and believed and

1 trusted [that Debtor] was acting honestly and with good will and that [Debtor] would do what they  
2 promised...” Phase 1 Judgment, 4:13-16. The state court also found that retaining all of the rents,  
3 issues and profits of the Property—while concealing from and misrepresenting to Plaintiff the true  
4 amounts earned—constituted actual fraud. Phase 1 Judgment, 5:25-6:1. This necessarily required  
5 a finding that such reliance was also justifiable under the circumstances. Further, the state court  
6 found the testimony so persuasive that it found “each and all of the factual bases of [Plaintiff’s]  
7 causes of action against [Debtor were] undisputed, established and true.” Phase 1 Judgment, 9:12-  
8 14. Thus, with respect to the Disgorgement Liability, the state court decided that Plaintiff’s  
9 reliance on the Debtor’s false statements and deceptive conduct was justifiable.

10 **v. Resulting damage proximately caused by justifiable reliance**

11 Nondischargeability determinations require a causal nexus between the subject debt and the  
12 fraud perpetrated. *See Field v. Mans*, 516 U.S. 59, 61 (1995) (describing section 523(a)(2)(A) as  
13 barring the discharge of debts “resulting from” or “traceable to” fraud). “Proximate cause is  
14 sometimes said to depend on whether the conduct has been so significant and important a cause  
15 that the defendant should be legally responsible.” *In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991).  
16 Proximate cause entails (1) causation in fact, which requires a defendant's misrepresentations to be  
17 a substantial factor in determining the course of conduct that results in loss, and (2) legal causation,  
18 which requires a creditor's loss to “reasonably be expected to result from the reliance.” *In re*  
19 *Brown*, 217 B.R. 857, 862 (S.D.Cal. 1998) (citing RESTATEMENT (SECOND) OF TORTS, §§  
20 546, 548A). “A fraudulent misrepresentation is a legal cause of a pecuniary loss resulting from  
21 action or inaction in reliance upon it if, but only if, the loss might reasonably be expected to result  
22 from the reliance.” RESTATEMENT (SECOND) OF TORTS, § 548A.

23 The state court found the damages proximately caused by Debtor’s continual  
24 misrepresentations about tenant occupancy, tenant turnover, operating expenses, and net income in  
25 order to fraudulently conceal and misappropriate partnership funds were \$1,121,249.84 as of  
26 January 21, 2015. Phase 1 Judgment, 13:1-9 & 14:7-11. There is a clear causal nexus between the  
27 Disgorgement Liability and the Debtor’s fraudulent conduct for the purposes of Bankruptcy Code  
28 section 523(a)(2)(A). The “multiple and serial actual and constructive frauds” diverted Plaintiff’s

1 50 percent share of the rents, issues and profits of the Property in violation of his rights as a general  
2 partner. Disgorgement of Debtor's ill-gotten gains remedies the pecuniary harm resulting from her  
3 misconduct. These damages are of a type reasonably expected to result from Debtor's conduct.  
4 Thus, with respect to the Disgorgement Liability, the state court determined that the damages  
5 resulted from the Plaintiff's reliance on the Debtor's false statements and deceptive conduct.

6 Debtor's opposition to the motion for summary judgment mistakenly argues that the debt at  
7 issue here was based upon a breach of contract. The Contract Damages, however, are *not* the  
8 subject of this nondischargeability action.

9 Debtor also argues that the Plaintiff is not entitled to prejudgment interest, citing *In re*  
10 *Barkay, George Diamond v. Scott R. Barkay, et al.*, No.11-1373 (10th Cir., Dec. 20, 2011) (*citing*  
11 *U.S. Indus. Inc. v. Touche Ross & Co.*, 854 F.3d 1223, 1256 (10th Cir. 1988)). That case, however,  
12 states that, "[u]nder federal law, 'prejudgment interest may generally be awarded if 1) the award of  
13 prejudgment interest would serve to compensate the injured party, and 2) the award of prejudgment  
14 interest is otherwise equitable.'" (*citing In re Inv. Bankers, Inc.*, 4 F.3d 1556 (10th Cir. 1993));  
15 *accord Purcell v. United States*, 1 F.3d 932, 942-43 (9th Cir. 1993) ("The award of prejudgment  
16 interest in a case under federal law is a matter left to the sound discretion of the trial court. Awards  
17 of prejudgment interest are governed by considerations of fairness and are awarded when it is  
18 necessary to make the wronged party whole.") (quotation omitted).

19 In the Ninth Circuit, when a debt arising under state law is found to be nondischargeable,  
20 "the award of prejudgment interest on that debt is also governed by state law." See *In re Niles*, 106  
21 F.3d 1456, 1463 (9th Cir.1997). Under California law, the court has discretion to award  
22 prejudgment interest in actions other than contract actions. See *Michelson v. Hamado*, 29 Cal.  
23 App. 4th 1566, 1586-87 (1994); Cal. Civ. Code § 3288 ("In an action for the breach of an  
24 obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may  
25 be given, in the discretion of the jury"). Here, the state court provided the factual grounds and  
26 legal authority for doing so. Phase 1 Judgment, 14 fn. 3. The state court was clearly within its  
27 discretion to grant prejudgment interest. Debtor's argument to the contrary is without merit.

**b. The issues before this Court were actually litigated in the former proceeding**

The issues identified above were actually litigated in the state court. The Debtor answered the state court complaint, participated in pre-trial proceedings, and participated in the trial itself. The state court's factual findings were based on the "clear and convincing" standard, which is more stringent than the preponderance standard required by Bankruptcy Code section 523. *See Grogan v. Garner*, 498 U.S. 279, 284-85 (1991) (discussing the burden of proof under section 523). Thus, the issues now before this Court were actually litigated in the former proceeding.

**c. The issues before this Court were necessarily decided in the former proceeding**

The determination that Debtor was liable on each element of actual fraud was essential to the verdict in the underlying state court action. The state court judgments are highly detailed and show that each element of Bankruptcy Code section 523(a)(2)(A) was necessarily decided in the context of the Plaintiff's state court action. Thus, the issues now before this Court were necessarily decided in the former proceeding.

**d. The decision in the former proceeding is final and on the merits**

The Phase 1 Judgment was entered after trial and is, therefore, a determination on the merits. The Phase 1 Judgment is now a final judgment. Under California law, the judgment of a trial court is final, and therefore collateral estoppel may be applied, once (1) an appeal of the judgment has been exhausted, or (2) the time to appeal the judgment has expired. *See Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 808 (9th Cir. 2007) (citing *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th 1168, 1174 (2000)). The Phase 1 Judgment was entered on April 25, 2016, and the Debtor has not appealed that judgment. The time for appeal has now expired. *See* Cal. Rule of Court 8.104(a). Thus the Phase 1 Judgment is a final decision decided on the merits.

**e. The Debtor was a party in the former proceeding**

The Debtor was a defendant in the state court proceeding and is named in the Phase 1 Judgment. Thus, the party against whom preclusion is sought was a party in the former proceeding.

1 **f. Conclusion**

2 All five elements required for the application of issue preclusion under California law are  
3 satisfied here. Further, as discussed above, the policy behind issue preclusion is served by applying  
4 the doctrine in this case. The preclusive effect of the Phase 1 Judgment is sufficient to meet  
5 Plaintiff's burden of persuasion and satisfy each element required by section 523(a)(2)(A). As  
6 there is no genuine issue of material fact, the Plaintiff is entitled to judgement as a matter of law.  
7 The Court finds that the Disgorgement Liability is nondischargeable under section 523(a)(2)(A).

8 **2. Nondischargeability under Section 523(a)(4)**

9 The Disgorgement Liability also is nondischargeable under Bankruptcy Code section  
10 523(a)(4). Section 523(a)(4) excepts from discharge debts incurred by "fraud or defalcation while  
11 [the debtor was] acting in a fiduciary capacity..." 11 U.S.C. § 523(a)(4). A defalcation is the  
12 "misappropriation of trust funds or money held in a fiduciary capacity; failure to properly account  
13 for such funds." *In re Lewis*, 97 F.3d 1182, 1186 (9th Cir. 1996).

14 **a. The exact issues sought to be precluded were decided in a former**  
15 **proceeding**

16 The state court found that Debtor and Plaintiff entered into a general partnership, and  
17 therefore had a fiduciary relationship under California law based on their status as "equal co-  
18 partners." Phase 1 Judgment, 12:13, & 14:7-8. This was shown by clear and convincing evidence  
19 at trial through testimony and the introduction a handwritten partnership agreement signed by the  
20 Debtor and Plaintiff. *See* Adv. Dkt. 53 at 9. The state court found that from April, 2002 (when the  
21 partnership was formed) until trial, the Debtor retained all rents and profits from the Property and  
22 continually misrepresented the tenant occupancy, tenant turnover, operating expenses, and net  
23 income of the Property in order to fraudulently conceal and misappropriate partnership funds.  
24 Phase 1 Judgment, 13:1-9. The state court found that this conduct constituted "serial" and  
25 "deliberate" frauds and breaches of the fiduciary duties owed by the Debtor to Plaintiff. Phase 1  
26 Judgment, 12:12-13. The Disgorgement Liability was thus incurred by actual fraud that occurred  
27 while the Debtor was acting in a fiduciary capacity under section 523(a)(4).  
28

1 The Debtor argues the state court's finding of a fiduciary relationship is insufficient for the  
2 purposes of federal nondischargeability law to be given preclusive effect. Under Bankruptcy Code  
3 section 523(a)(4), the Plaintiff has the burden of establishing that a fiduciary relationship, as  
4 determined by federal law, exists at the time of the alleged fraud or defalcation. Fiduciary  
5 relationships are defined broadly under California law as relationships that involve trust,  
6 confidence and good faith and are not always sufficient to meet the definition of "fiduciary" under  
7 section 523(a)(4). *See Double Bogey, L.P. v. Enea*, 974 F.3d 1047, 1050 (9th Cir. 2015).  
8 The Ninth Circuit's narrower definition is that the fiduciary "relationship must be one arising from  
9 an express or technical trust that was imposed before and without reference to the wrongdoing that  
10 caused the debt." *In re Cantrell*, 329 F.3d 1119, 1125 (9th Cir. 2003) (emphasis added) (citing *In*  
11 *re Lewis*, 97 F.3d 1182, 1185 (9th Cir. 1996)). Such fiduciary relationships are created where the  
12 debtor is a trustee in "strict or narrow sense" through an express or technical trust relationship. *See*  
13 *In re Banks*, 263 F.3d 862, 871 (9th Cir. 2001) ("The essential elements of an express trust are (1)  
14 sufficient words to create a trust; (2) a definite subject; and (3) a certain and ascertained object or  
15 res."). It is "[t]he intent to create a trust relationship rather than a contractual relationship is the key  
16 element in determining the existence of an express trust." *In re Pedrazzini*, 644 F.2d 756, 758 fn. 2  
17 (9th Cir. 1981).

18 "Most courts today . . . recognize that the 'technical' or 'express' trust requirement is not  
19 limited to trusts that arise by virtue of a formal trust agreement, but includes relationships in which  
20 trust-type obligations are imposed by statute or common law." *Matter of Bennett*, 989 F.2d 779,  
21 785 (5th Cir. 1993). Ultimately, whether an individual relationship is fiduciary is an issue of  
22 federal law. *See Ragsdale v. Haller*, 780 F.2d 794 (9th Cir. 1986).

23 The Ninth Circuit Court of Appeals has held that "California partners are fiduciaries within  
24 the meaning of § 523(a)(4)". *Ragsdale v. Haller*, 780 F.2d at 796. Thus, the creation of a  
25 partnership between the Debtor and the Plaintiff under California law created a fiduciary  
26 relationship for the purposes of section 523(a)(4). Here, there were sufficient words to create a  
27 partnership between the parties and that partnership had a definite subject: the Property. Further,  
28 there was a certain and ascertained object or res as the Plaintiff contributed \$200,000.00 to the

1 partnership. Thus, by deciding that the Plaintiff and Debtor were general partners, the state court  
2 decided the Debtor was a “fiduciary” within the meaning of section 523(a)(4).

3 The Debtor argues the state court’s findings of fraudulent inducement as to the partnership  
4 agreement shields the Debtor from liability under section 523(a)(4). In support the Debtor cites  
5 *Double Bogey, L.P. v. Enea*, 794 F.3d 1047, 1050-51 (9th Cir. 2015) arguing that the fiduciary  
6 relationship or trust obligations must preexist bad acts generally.<sup>5</sup> While this statement of law is  
7 true, the Debtor’s argument is specious. A partnership under California law gives rise to a  
8 fiduciary relationship under federal law for the purposes of section 523(a)(4), even if fraudulently  
9 induced. The effect of fraudulent inducement under California law is to make the partnership  
10 agreement voidable at the option of an innocent party. *See generally, Wilke v. Coinway, Inc.*, 257  
11 Cal. App. 2d 126 (1967); 1 WITKIN, SUMMARY OF CALIFORNIA LAW, 10TH ED., Contracts § 297  
12 (2016).

13 Here, the Plaintiff elected to sue for damages based on the partnership, and not to void the  
14 partnership and seek the return of his fraudulently induced investment. The Ninth Circuit  
15 requirement that an express or technical trust be imposed “before and without reference to the  
16 wrongdoing that caused the debt,” upon which Debtor argument is premised, refers to the  
17 imposition of liability when trusts, neither technical nor express, are imposed by law. One example  
18 of this is when a constructive trust is imposed as a remedy for traditional fraud liability. In that  
19 circumstance, the trust fails to satisfy the standard for nondischargeability under section 523(a)(4)  
20 because the trust is imposed after and because of the defendant’s wrongdoing.

21 Here, the state court did not impose a constructive trust on the rents, issues and profits of  
22 the Property. Instead, it sought to remedy the damage the Debtor caused by diverting the income  
23 of the partnership. Further, the rule Plaintiff suggests, that prior fraudulent conduct somehow taints  
24

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25 <sup>5</sup> The question of law at issue in *Double Bogey, L.P. v. Enea* was whether a debtor can be considered a fiduciary under  
26 Section 523(a)(4) solely by the application of California’s alter ego doctrine. The rule Debtor relies upon, cited in  
27 *Double Bogey*, is from *In re Lewis*, 97 F.3d 1182, 1185 (9th Cir. 1996) holding “[that a] express or technical trust [be]  
28 imposed before and without reference to the wrongdoing that caused the debt.”

subsequent fiduciary obligations, would improvidently allow for a debtor's prior bad acts to be used as a shield to liability when the law recognizes heightened duties and standards of conduct. The Debtor's argument on this point is wholly without merit.

**b. All other elements of issue preclusion are satisfied**

For the same reasons noted above, this Court concludes that: (1) the issues now before this Court were actually litigated in the former proceeding; (2) that the determination that Debtor committed fraud and defalcations while a fiduciary relationship existed was essential to the verdict in the underlying state court action; (3) the Phase 1 Judgment was a final determination on the merits; and (4) Debtor, the party against whom preclusion is sought, was a party in the former proceeding against whom judgment was entered.

**c. Conclusion**

All five elements required for the application of issue preclusion under California law are satisfied here. Further, as discussed above, the policy behind issue preclusion is served by applying the doctrine in this case. The preclusive effect of the Phase 1 Judgment is sufficient to meet Plaintiff's burden of persuasion and satisfy each element required by section 523(a)(4). As there is no genuine issue of material fact, the Plaintiff is entitled to judgment as a matter of law. The Court finds that the Disgorgement Liability is nondischargeable under section 523(a)(4).

**3. Nondischargeability under Section 523(a)(6)**

The Disgorgement Liability is nondischargeable under section Bankruptcy Code section 523(a)(6). Section 523(a)(6) provides that debts for "willful and malicious injury by the debtor" are excepted from a debtor's bankruptcy discharge. The malicious injury requirement is separate from the willful injury requirement. *See In re Barboza*, 545 F.3d 702, 706 (9th Cir. 2008); *In re Su*, 290 F.3d 1140, 1146–47 (9th Cir. 2002). In the Ninth Circuit, the willfulness requirement is satisfied when either: (1) the debtor had a subjective intent to inflict the injury on the plaintiff; or (2) the debtor believed that the injury was substantially certain to occur as a result of the debtor's conduct. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998); *In re Su*, 290 F.3d 1140, 1145 & fn. 4 (9th Cir. 2002). A "malicious injury" is one where the injury resulted from: (1) a wrongful act; (2) done intentionally; (3) that necessarily causes injury; and (4) that is committed without just cause

1 or excuse. *In re Jercich*, 238 F.3d 1202, 1208–1209 (9th Cir. 2001); 3 March, Ahart and  
2 Shapiro, CALIFORNIA PRACTICE GUIDE: BANKRUPTCY, ¶ 22:670 and 22:680 (2015).

3 **i. The exact issues sought to be precluded were decided in a former**  
4 **proceeding**

5 Plaintiff proved by clear and convincing evidence that the Disgorgement Liability resulted  
6 from willful and malicious injury inflicted by the Debtor. The Disgorgement Liability was  
7 awarded because the Debtor committed a series of intentional frauds with the subjective intent to  
8 inflict pecuniary injury on the Plaintiff. The state court adduced that the frauds were “calculated,  
9 deliberate and purposeful” and that the underlying conduct showed a subjective intent to injure. As  
10 stated in Plaintiff’s closing argument during the Phase 1 trial, which was adopted by the state court  
11 in the Phase 1 Judgment: “this [was] a malicious course of conduct. It wasn’t an accident. It  
12 wasn’t ‘Oh my Gosh, I don’t know what happened.’ It was day in, day out, year in, year out.”  
13 Phase 1 Judgment, 19:14-16; Phase 2 Judgment, 11:9-11. Thus, the issue of whether the  
14 Disgorgement Liability was the result of willful and malicious injury, the issue sought to be  
15 precluded, was decided in the former proceeding.

16 **ii. All other elements of issue preclusion are satisfied**

17 For the same reasons noted above, this Court concludes that: (1) the issues now before this  
18 Court were actually litigated in the former proceeding; (2) that the determination that the  
19 Disgorgement Liability was the result of willful and malicious injury was essential to the verdict in  
20 the state court action; (3) the Phase 1 Judgment was a final determination on the merits; and (4)  
21 Debtor, the party against whom preclusion is sought, was a party in the former proceeding against  
22 whom judgment was entered.

23 **iii. Conclusion**

24 All five elements required for the application of issue preclusion under California law are  
25 satisfied here. Further, as discussed above, the policy behind issue preclusion is served by applying  
26 the doctrine in this case. The preclusive effect of the Phase 1 Judgment is sufficient to meet  
27 Plaintiff’s burden of persuasion and satisfy each element required by Bankruptcy Code  
28 section 523(a)(6). As there is no genuine issue of material fact, the Plaintiff is entitled to

judgement as a matter of law. The Court finds that the Disgorgement Liability is nondischargeable under section 523(a)(6).

## **B. The Punitive Damages**

### **1. Nondischargeability under section 523(a)(6)**

The Punitive Damages entered by the state court are nondischargeable pursuant to Bankruptcy Code section 523(a)(6) as a matter of law.<sup>6</sup>

#### **a. The exact issues sought to be precluded were decided in a former proceeding**

Punitive damages based on California judgments are often, but are not per se, nondischargeable under section 523(a)(6). In *Geiger*, the Supreme Court articulated a state of mind requirement that the “injury” under section 523(a)(6) be deliberate or intentional, “not merely a deliberate or intentional act that leads to injury.” *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). “[D]ebts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6).” *Id.* at 64. Under California law however, punitive awards may be predicated on either “oppression,” “fraud” or “malice.” *See* Cal. Civ. §3294(C)(1), (2), & (3). As noted recently by the Bankruptcy Appellate Panel for the Ninth Circuit, “only fraud and one aspect of malice [referring to intentional malice], as that term is defined for the purposes of the California punitive damages statute, satisfy the willful injury requirement of § 523(a)(6).” *In re Tomkow*, No. 2:13-AP-01751-WB, 2017 WL 65351, at \*9 (9th Cir. B.A.P. Jan. 5, 2017). Bankruptcy courts must therefore carefully consider punitive damages judgments previously entered against a debtor in order to determine that the judgments conclusively establish the state of mind requirement articulated in *Gieger*. In *In re Plyam*, for example, the Bankruptcy Appellate Panel for the Ninth Circuit held that a judgment for punitive damages was an insufficient for the purposes of issue preclusion because the jury verdict only specified that the defendant acted with “oppression,” “fraud” or

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<sup>6</sup> The Phase 1 Judgment and Phase 2 Judgment raise theoretical questions regarding the proportion of the Punitive Damages attributable to the conduct that gave rise to the Disgorgement Liability under sections 523(a)(2) and (a)(4), respectively. However, the Court need not decide these questions because all of the conduct giving rise to the Punitive Damages was the result of willful and malicious injury within the meaning of Bankruptcy Code section 523(a)(6).

1 “malice,” and thus the jury verdict may have been based on a findings that failed to satisfy the  
2 element of willful injury. *See In re Plyam*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015).

3 The Debtor argues the Phase 1 Judgment and Phase 2 Judgment are ambiguous because the  
4 state court never expressly made the finding that the Debtor acted with “intentional” malice, and  
5 therefore, as in *In re Plyam*, the Court cannot apply issue preclusion. But that case is  
6 distinguishable. Here, the Punitive Damages were awarded, as stated in the Phase 2 Judgment,  
7 based on “clear and convincing” evidence of Debtor’s “oppressive, fraudulent and malicious course  
8 of conduct.” As the Phase 1 Judgment and Phase 2 Judgment conspicuously note, here: “it’s not  
9 only fraud, it’s not only oppression, but it’s also malice, and on each of those grounds we’re  
10 entitled to an award of punitive damages...” Phase 1 Judgment, 19:3-25; Phase 2 Judgment, 10:25-  
11 11:16. This statement is sufficient to meet the “willfulness” requirement of section 523(a)(6)  
12 because, as noted in *In re Tomkow*, a finding of either fraud or intentional malice satisfy the state of  
13 mind requirements set forth in *Geiger*. In addition, the Phase 2 Judgment is not ambiguous. The  
14 state court decided that the malice at issue here was intentional; and specifically used the words  
15 “purposeful malice” in describing Debtor’s fraudulent conduct. As Plaintiff points out purposeful  
16 and intentional are synonymous in this context. They mean actions with a clear intention or design.  
17 *See* MERRIAM-WEBSTER’S DICTIONARY (10TH ED. 1996).

18 Here, all of the conduct the Punitive Damages are predicated on, even the Debtor’s  
19 intentional conversion, are willful and malicious injuries under section 523(a)(6). Debts based on  
20 fraud are willful and malicious injuries under section 523(a)(6). *See In re Diamond*, 285 F.3d 822,  
21 828 (9th Cir. 2002) (noting a factfinder must determine intentional tortious conduct which  
22 necessarily includes the essential elements of section 523(a)(6) when finding actual fraud); *In re*  
23 *Tomkow*, No. 2:13-AP-01751-WB, 2017 WL 65351, at \*9 (9th Cir. B.A.P. Jan. 5, 2017). Debts  
24 based on conversion may be, but are not per se, nondischargeable under section 523(a)(6). *See In*  
25 *re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999). The court must find that the conversion was  
26 “willful” and “malicious,” which is sufficient but not necessary under California law for conversion  
27 liability. *Id.* Here, the state court found that the Debtor was liable for “intentional” and “willful”  
28 conversion of Plaintiff’s inherited furnishings. Phase 1 Judgment, 10:23-25. Specifically, the state

1 court found by clear and convincing evidence that “[the Debtor and Doron] acted oppressively and  
2 in conscious derogation of [Plaintiff’s] rights.... [The] conduct... was despicable, malicious and  
3 warranted by an intent to cause harm and injury to [Plaintiff].” Phase 1 Judgment, 11:27- 12:3.  
4 The Debtor’s specific intent to do harm clearly satisfies the state of mind requirement articulated in  
5 *Geiger*, and the conversion claim in this case is thus a willful and malicious injury under 523(a)(6).

6 The Punitive Damages here, which are predicated on the Debtor’s “multiple frauds,  
7 breaches of fiduciary duty, and other and intentionally tortious conduct” perpetrated against the  
8 Plaintiff, were found by the state court to be based entirely on willful and malicious conduct within  
9 the meaning of section 523(a)(6).

10 **B. All other elements of issue preclusion are satisfied**

11 For the same reasons as noted above under the Disgorgement Liability, this Court concludes  
12 that: (1) the issues now before this Court were actually litigated in the former proceeding; (2) that  
13 the determination was essential to the verdict in the underlying state court action; (3) the Phase 1  
14 Judgment and Phase 2 Judgment were final determinations on the merits; and (4) Debtor, the party  
15 against whom preclusion is sought, was a party in the former proceeding against whom judgment  
16 was entered.

17 **C. Conclusion**

18 All five elements required for the application of issue preclusion under California law are  
19 satisfied here. Further, the policy behind issue preclusion is served by applying the doctrine in this  
20 case. The preclusive effect of the Phase 1 Judgment and Phase 2 Judgment is sufficient to meet  
21 Plaintiff’s burden of persuasion and satisfy the requirements of section 523(a)(6). As there is no  
22 genuine issue of material fact, the Plaintiff is entitled to judgement as a matter of law. The Court  
23 finds that the Punitive Damages are nondischargeable under section 523(a)(6).

24 **VI. ATTORNEY’S FEES & COSTS**

25 Unless the Bankruptcy Code provides otherwise, a prevailing party in bankruptcy court  
26 litigation generally may have an allowable claim for attorney’s fees if attorney’s fees would be  
27 recoverable under applicable nonbankruptcy law, such as when a contract enforceable under state  
28

1 law allocates attorney's fees. *See Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549  
2 U.S. 443, 447-450 (2007); *In re Penrod*, 802 F.3d 1084, 1088-1090 (9th Cir. 2015).

3       The nondischargeable amount of a debt may include an award of attorney's fees and costs  
4 against a debtor. As to debts incurred by fraud: "Once it is established that specific money or  
5 property has been obtained by fraud . . . 'any debt' arising therefrom is excepted from discharge."  
6 *Cohen v. de la Cruz*, 523 U.S. 213, 214 (1998). *See also In re Suarez*, 400 B.R. 732, 738-39 (9th  
7 Cir. B.A.P. 2009) (applying *Cohen* to affirm the bankruptcy court's determination under §523(a)(6)  
8 that attorney's fees and costs were also nondischargeable, even though no compensatory damages  
9 were awarded).

10       Here, the natural consequence of Debtor's intentional tortious behavior is the Plaintiff's  
11 election to pursue his legal remedies. The difficulty of such pursuit was a lynchpin of the Debtor's  
12 fraudulent scheme. Applying the rationale of *Cohen v. de la Cruz*, it is appropriate and just for the  
13 Plaintiff's nondischargeable debt to include reasonable and necessary attorney's fees and costs, to  
14 the extent Plaintiff is entitled to such an award under nonbankruptcy law.

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**VII. CONCLUSION**

For the reasons stated above, the Court will grant summary judgment in favor of Plaintiff. The Court will enter a separate nondischargeable judgment for \$1,480,248.86 as of August 4, 2016, with interest continuing at the legal rate of 10 percent per annum, compounding thereafter, plus such fees and costs, including attorney fees, to which the Plaintiff demonstrates an entitlement. Before the Court enters such judgment, the Court will determine the amount of any such fees and expenses. No later than 14 days after the entry of this Memorandum, the Plaintiff shall file and serve a motion for attorney fees and costs setting forth the legal and factual basis for all amounts requested by the Plaintiff. The Debtor shall have 14 days to file and serve any objections. The Plaintiff may file a reply to such objections, no later than 7 days after the objection is filed and served.

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Date: May 10, 2017



Martin R Barash  
United States Bankruptcy Judge